IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4108 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARATSINH CHUDASAMA FILM PVT LTD.

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioners

MR MUKESH A PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/2000

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution, the petitioners challenge the legality, validity, propriety and correctness of the order dated 5th May, 1998 of the respondent No.1 received by them on 14th May, 1998 whereby the respondent No.1 ordered to

grant land to the petitioners adjoining to their cinema hall situated in Sector 21, Gandhinagar admeasuring about 500 sq.mts. on the rent of Rs.30,000/=p.m..

2. The facts of the case leading to this special civil application are that in the capital project of the State of Gujarat, the Town Planning Authority earmarked two plots in Gandhinagar town for the purpose of constructing cinema halls. One plot was earmarked for the construction of the cinema hall situated in Sector 16. The said plot admeasuring about 1100 sq.mts. was sold by a public auction. While making public auction of that land, one of the concessions which was attached thereto was that the said land would be fully used for the construction of the cinema hall and from the adjoining land the respondents will provide to the purchaser of the land for the purpose of parking space on the token rent of Re.1/- per year. The said plot was initially purchase by M/s. Chandra Exhibitors Pvt. Ltd.. The cinema hall has been constructed thereon. Under the order dated 27th July, 1981, annexure `A' annexed to the special civil application, the respondent granted 1100 sq. mts. of land as per the averments made in the special civil application on the yearly rent of 1 Re. for parking space to the owner of this land, Shalimar cinema.

3. The plot No.141 of Sector 21 is the another plot which is earmarked for the purpose of constructing the cinema hall. In the resolution No.LND-1077/ (5513)-B, Government of Gujarat, Public Works Department, Sachivalaya, Gandhinagar dated 27th February, 1979 it is resolved to put the plot of 1500 sq. mts. in Sector 21 at Gandhinagar to auction at the upset price of Rs.160/= per sq. mt. for constructing a permanent, modern, air conditioned cinema theatre subject to terms and conditions mentioned therein. For the purpose of the decision of this petition, the term and condition No.8 of the terms and conditions aforesaid is relevant, which is reproduced herewith and reads as under:

8. The site coverage for the purpose of construction shall be 100% subject to the provision being made for queue for the purchases of tickets within the theatre premises as per Cinema Rules. Regulations provided in Bombay Cinema Rules shall however govern the construction of the cinema. Parking a place for the cinema theatre as required under Bombay Cinema Rules shall be provided by Government in the adjacent area by charging token rent of Re.1/- per annum.

4. As per this condition, the site coverage for the purpose of construction of the cinema hall shall be 100% subject to the provision being made for the purpose of queue for purchase of tickets within the theatre premises, as per cinema rules. Parking place for the theatre as required under the Bombay Cinema Rules shall be provided by the Government in the adjacent area by charging token rent of Re.1/- per annum. In pursuance of the aforesaid resolution, the competent authority i.e. the Additional Collector, Gandhinagar issued an advertisement dated 3rd March, 1979 for holding a public auction of the plot No.141, Sector 21, Gandhinagar admeasuring about 33 mt. X 50 mt. to be held on April 16, 1979. As per this advertisement also, it is given out that on the plot 100% construction is permissible and land would be provided adjoining to the said plot for the purpose of parking space on the token rent of Re.1/- per annum. M/s. Rajshri Enterprises of Gandhinagar was the highest bidder and the offer of the said bidder was accepted at the rate of Rs.162/- per sq. mt. for this plot No. 141 Sector 21 of Gandhinagar vide order dated 18th May, 1979 confirming the order for the sale of the plot aforesaid to M/s. Rajshri Enterprises with the conditions attached thereto. Condition No.6 attached to this order is same as to condition No.8 which is shown in annexure `C', the resolution of the Government dated 27th February, 1979. As per this condition, it is to be stated at the cost of repetition that 100% coverage of the land for the construction of the cinema hall is permitted and it is agreed to give the land adjoining to cinema hall for the parking space on the token rent of Re.1/per annum. M/s. Rajshri Enterprises, which is a partnership firm belongs to M/s. Kirit Acharya and Bakul Acharya. The partners aforesaid of the said firm were found to be involved in some criminal conspiracy to defraud the State Bank of India, Gandhinagar Branch and those persons were prosecuted for several criminal offences by the Central Bureau of Investigation. The State Bank of India filed a civil suit being civil suit No.6 of 1984 in the court of Civil Judge (S.D.), Ahmedabad (rural) for recovery of Rs. 6 crores and odd against those two partners of the firm. In the suit, applications were filed for injunction and attachment before judgment as well as for appointment of the Receivers of their assets. The Receivers were appointed by the learned Civil Judge (S.D.). Initially, three Receivers were appointed. The order of the Receivers was subsequently modified and ex-employee of the State Bank of India, Mr. B.B. Marfatia was appointed as a Sole Receiver of the property of these partners, which

includes the land of plot No.141, Sector No.21 of Gandhinagar. It is not in dispute that M/s. Rajshri Enterprises started construction of the cinema hall on the said plot and has constructed the masonry work and the ceiling of the said cinema hall. Before the said cinema hall could have been fully constructed, as stated earlier, these partners of the firm were prosecuted by the C.B.I. and were arrested and therefore, the said cinema hall could not be fully constructed.

5. The Collector, Gandhinagar initiated the proceedings for the breach of the conditions subject to which this plot was sold to M/s. Rajshri Enterprises. The partners were called upon to show cause as to why the land of the plot No.141 of Sector 21, Gandhinagar should not be forfeited to the Government as the firm has failed to fulfil the conditions subject to which this plot was sold. Nobody appeared for the firm to show cause against the notice and therefore, the Collector, Gandhinagar vide its order dated 17th February, 1987 ordered for forfeiture of the land to the Government without payment of any compensation. The State Bank of India, Gandhinagar filed the revision application before the Secretary (Appeals) against that order of the Collector, Gandhinagar on the ground that the State Bank of India has interest in this land and therefore, it was required to be heard before passing of any order of forfeiture of said land to the Government. The revision application of the State Bank of India, Gandhinagar Branch came to be allowed by the Additional Chief Secretary (Appeals) under its order dated 18th October, 1988. The matter was remanded back to the Collector, Gandhinagar with a direction to rehear the matter after issuing notice to the State Bank of India who is the mortgagee of the said property. In pursuance of the order of the Additional Chief Secretary (Appeals), Gandhinagar in the revision application of the State Bank of India, the Collector, Gandhinagar heard the matter again and vide its order dated 12th October, 1989 held that the land will be transferred in favour of the State Bank of India in view of the fact that the land in question was mortgaged by the partners of the firm with the Bank. It has next been ordered that the State Bank of India is entitled to recover its dues from the partners by selling this plot. It is further ordered that the sale of the plot shall be subject to the conditions as mentioned in the order. This order has been made by the Collector on 12th October, 1989. Being aggrieved of the order of the Collector, Gandhinagar aforesaid , the partners of M/s. Rajshri Enterprises, Mr. Abhilash Acharya filed a revision application before the Additional Chief

Secretary (Appeals), Gandhinagar which came to be rejected on 27th December, 1989./11th January, 1990.

6. The Court Receiver Mr. B.B. Marfatia issued a public notice inviting offers for purchase of the said incomplete cinema hall along with the land. In pursuance of the public notice aforesaid, M/s. Bharatsinh Chudasama & Co., a partnership firm, filed its tender and submitted the offer. Some other offers were also received by the Court Receiver, and therefore, the court Receiver negotiated with the tenderers and the offer of M/s. Bharatsinh Chudasama & Co. was found to be the highest one and was accepted. It was placed before the learned Civil Judge (S.D.) for appropriate orders. The offer of M/s. Bharatsinh Chudasama & Co. was accepted and the sale deed was executed in favour of M/s. Bharatsinh Chudasama & Co. There were some litigations in respect of the execution of the conveyance deed. However, as directed by this court, the conveyance deed was executed in favour of M/s. Bharatsinh Chudasama & Co. and the said firm paid full amount of Rs.25,81,000/= towards the full price of the said cinema hall and the land and the raw materials and other things found to be lying there. The Collector, Gandhinagar vide its order dated 3rd July, 1992 approved the sale and directed that the conditions attached in the Kabuliyatnama executed by the partners of M/s. Rajshri Enterprises dated August 16, 1979 would be applicable to M/s. Bharatsinh Chudasama & Co.. It is also stated that all conditions attached in the order dated 18th May, 1979 would also be applicable to the purchaser. The condition No.3 in the order dated 18th May, 1979 states that the provisions in respect of the parking were to be made as per the original conditions attached in the order dated 18th May, 1979.

7. M/s. Bharatsinh Chudasama & Co., a firm submitted an application on 20th June, 1992 to the Collector, Gandhinagar inter-alia requesting him to grant the adjoining land for the purpose of providing parking space to the spectators. In the said application, the parking space was contemplated on a moderate consideration and demand was made for the land admeasuring about 800 sq. mts.. This demand was made on an expected visitors as per the norms which were prevalent earlier. The petitioner stated in para No.17 of the special civil application that since the land was not formerly earmarked and given for the purpose of parking space, the open space available adjacent to the cinema hall are being used by the public for the parking space. the petitioner stated that a large sum has been

invested by it to make the ultra modern, attractive and a nice theatre. It is stated to be the first cinema hall in the State having ultra sound system which is known as Digital Ultra Sound System. It has further been given out that the the Architect of the said cinema hall has designed it where first few rows in the balcony which are named as Pavilion has a zero degree viewing point, and therefore, from the said row the viewing of the movie would be best and that has created an attraction to the public at large not from the Gandhinagar city alone but from the surrounding areas including Ahmedabad city. It is stated that most of the viewers and the spectators visiting are from outside of the Gandhinagar city are visiting the cinema hall with their own vehicles either two wheelers or four wheelers. That is the reason that the expected traffic of the cinema hall so far as the vehicles are concerned is much larger than what ordinary cinema hall would receive. It is averred that ordinarily when the cinema hall is full to its capacity, the space for car parking would be required for about 100 to 150 cars. Concluding this aspect, the petitioner stated that looking to the circumstances, about 2000 sq. mts. of land would be required for the purpose of providing parking space considering the inflow of the vehicles as on today. From time to time, the applications were submitted by M/s. Bharatsinh Chudasama & Co. for grant of adjoining land for providing parking space. After formal inauguration and opening of the cinema on 4th August, 1994, an application has been submitted in September, 1994 for the allotment of land for parking space which was followed by the application dated 12th February, 1996. It is pointed out therein that on account of not providing the parking space, the viewers of the hall faces several problems. It has further been pointed out that the parking space has to be provided on a token rent of Re.1/- per annum as per one of the covenants subject to which this plot has been purchased. It has further been given out that within a year from the date of the opening of the hall about 34 lacs of rupees have been paid as entertainment tax to the Government. Another application has been filed on 27th March, 1996. In that application, reference has been made to the case of Shalimar cinema situated at Gandhinagar in Sector 16 which has been given 1100 sq. mts. of land on token rent of Re.1/- per annum. This application was followed by a subsequent application dated 1st June, 1996 thereunder attention has been drawn to the resolution of the Government dated 27th February, 1979 and the corrigendum issued thereto dated 31st march, 1979 and the condition attached in the order dated 18th May, 1979 passed by the Collector, Gandhinagar and the Government

was reminded of the fact that it is an obligation which is undertaken by the Government to provide parking space on the token rent of Re.1/- per annum. An application has also been made to the Hon'ble Chief Minister, concerned Minister and the Secretary to the Roads and Buildings Department and also to the Collector, Gandhinagar. The Hon'ble Minister, Roads and Buildings department addressed a letter to the Hon'ble Minister Mr. Chaudhari on 6th April, 1996 and informed that the Secretary of the Roads & Buildings has been instructed to do the needful in the matter. Despite of the instructions issued by the Hon'ble Minister, file in respect of providing the adjoining land was not moved by an inch, and therefore the representation has been made to the Hon'ble Chief Minister. The Officer on Special Duty attached to the Chief Minister, Mr. Chavda wrote a letter to the Secretary, Roads & Buildings and The Finance on 4th February, 1997 requesting them to forward the file to the Hon'ble Chief Minister in respect of providing space for parking to the cinema hall. The firm M/s. Bharatsinh Chudasama & Co. is now converted into a Private Ltd. Co. and all assets of the firm are the assets of the company. This conversion took place on 4th September, 1996. The petitioner realised that the applications of the petitioners made from time to time by it for grant of adjoining land for parking space would not be considered by the authorities, approached this court by way of preferring the writ petition being Special civil application NO.1051 of 1998. In that petition, prayer has been made for following reliefs:

(A) Be pleased to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ order or direction directing the respondents to grant the adjoining land to the petitioners for the purpose of parking space and for other facilities as contemplated under condition No.6 attached with impugned order dated May 18, 1979.

(B) Pending admission and final disposal of this petition, be pleased to direct the respondents to place on record what actions they have taken on the applications submitted by the petitioners and be pleased to further direct the respondents to consider those applications and pas an appropriate order on the applications submitted by the petitioners for grant of the adjoining land.

(C) Be pleased to pass such other and further orders as may be deemed fit.

8. Notice has been issued in this petition and thereafter, the petitioner received a communication from the respondent No.3 dated 31st March, 1998 wherein the petitioners were informed that the petitioners are liable to provide the space for parking as provided in rule 8-B of the Bombay Cinema Rules, 1954. Still, the petitioners have not made any arrangement for providing parking space and install a notice board informing the viewers that any vehicles parked outside the cinema hall would be at the risk of the viewers and thereby the petitioners have tried to escape from their liability under the Rules. It has further been mentioned in the said letter that the petitioners were liable to provide the facilities for parking free of cost to the viewers under the rules and regulations and failure of the petitioners would entail the liability of cancellation of the cinema licence. They were directed to remain present to attend the meeting on 4th April, 1998. In the meeting, it has been pointed to the respondent No.3 that the land for parking space has to be allotted by the Government but despite of filing applications, nothing has been done in this respect. The respondent No.3 assured the petitioners that relevant files would be called for and directions would be issued. Ultimately, the order dated 5th May, 1998 is passed by the respondent No.1 for allotment of the land of 500 sq. mts. on the rent of Rs.30,000/-p.m.. Hence, this special civil application.

9. The special civil application was placed in Court for preliminary hearing on 10th September, 1998. On that date, notice was issued to the respondents returnable on 8th October, 1998. It is further ordered that it be placed with special civil application NO.1029 and 1051 of 1998. This matter was admitted on 1st May, 2000 and was ordered to be placed for final hearing on 9th May, 2000. Despite of service of notice, which was made returnable on 8th October, 1998, the respondents have not bothered or taken any care, as usual what they are doing, to file reply to the special civil application. Not only this, even after admission of this petition on 1st May, 2000, the respondents have not cared to file reply to the special civil application. In absence of any reply to the special civil application, the averments made by the petitioners in the special civil application stand uncontroverted, and as such, those averments are to be taken to be admitted by the respondents. It is really shocking that the State of Gujarat and its Officers are not taking care to see that the matters which are being filed against the State of Gujarat are being effectively contested. This happens in substantial number of cases.

This conduct of the officers of the State of Gujarat, which is impersonal, goes to suggest that either they are not caring for the litigations which are filed against the State or for the reasons best known to them, they are not contesting these matters deliberately so as to make it easy and convenient for the petitioners to get a favourable decision from the courts. It is very doubtful that the same is done without any consideration. This tendency of the officers of the State of Gujarat deserves to be deprecated. The way and the manner in which the cases are being defended by the officers of the State of Gujarat in courts, suggestive of the fact that they may deliberately are doing all these things so as to extend a favouring hand or benefits to the litigants in the court. It is unfortunate that the Officers of the State are not acting for their master. Not only this, they are acting in a manner and fashion which is totally detrimental to the interest of the State of Gujarat. This is happening for the reason that the State of Gujarat is not taking any severe action against defaulting, erring, careless and negligent officers. The officers are not accountable for their negligence or mischief and that is the reason that everyday they are being encouraged to act detrimental to the interest of the State of Gujarat and for the benefit of the litigants. Yet there is another aspect which needs to be noticed here that despite of spending huge amount for defending the litigations which are being filed against the State of Gujarat, this is the total defence which has been put by the officers of the State of Gujarat in the court.

10. For want of reply to the special civil application, natural consequence thereof is to accept whatever factual aspects stated by the petitioners to be correct. The A.G.Ps. who are appearing for the State of Gujarat are handicapped or they are made handicapped by the officers of the State of Gujarat by not filing reply to the special civil applications and as a result of which they are unable to controvert any factual aspect for want of reply. On legal aspects though they can make submissions but unless on factual aspects reply is there, on legal aspect also, it is very difficult in many of the cases to defend the litigation effectively. Be that as it may. It is the concern of the State of Gujarat and if proper steps are not being taken to penalise these officers then the future of the State of Gujarat is dark and its position may be worse than that of a minor or a orphan or a widow in the court. In case timely steps are not being taken and the house is not corrected then it is nothing but only encouraging its officers to indulge in the illegal, and corrupt activities as well as to waste

the people's money.

11. From the documents which have been produced on the record i.e. the resolution of the Government of Gujarat, Public Works Department, Sachivalaya, Gandhinagar dated 27th February, 1979, annexure `C', the order of the Additional Collector, Block No.3, Sachivalaya, Gandhinagar dated 15th May, 1979 and the order of the Dist. Collector, Gandhinagar dated 3rd July, 1992, I find that the land of plot No.141, Sector No.21, Gandhinagar was sold for construction of the cinema hall with a specific covenant that the State Government will provide the adjoining land for parking space to the owner of the land on a token rent of Re.1/per year. The conditions which are put in the order by the Collector, Gandhinagar nowhere states that whatever earlier covenanted by the Government of Gujarat has been made redundant or the Government has been relieved of that covenants. In addition to these covenants, certain other conditions have been put by the Collector which will not take out the covenants as contained in the resolution of the State Government, annexure `C'. Moreover, once the Government has agreed to provide the parking space to the cinema hall in adjoining land on the token rent of Re.1/- per annum it was not permissible to the Collector to change that covenant. The land was sold by the Court Receiver and it has to be used only for the construction of a cinema theatre. This land was earmarked for construction of cinema hall and the resolution of the State Government remains in force for all the purposes and it is bound by the covenant which it has undertaken to fulfil. It is true that till the cinema hall is constructed there may not be any necessity or urgency in the matter to grant the adjoining land to the owners of plot No.141 for parking space. The contention of the learned counsel for the respondents that parking space is to be provided by the petitioners, cannot be accepted in the facts of this case. This contention is totally contrary to what the State of Gujarat has undertaken as its obligation under its resolution annexure `C', the advertisement for putting the land to auction as well as further orders which have been passed by the Collector in the matter. Otherwise also, there is no defence of the respondents in the special civil application, as reply thereto has not been filed. Taking into consideration the totality of the facts of this case, I am satisfied that it is a case where the State of Gujarat is under an obligation to provide the land for parking space to the holder of the land of plot No.141 of Section 21, Gandhinagar on the token rent of Re.1/- per annum.

12. The matter yet may be examined from another aspect. Two plots in Gandhinagar township were reserved for the construction of cinema halls i.e. a plot in Sector 16 and another in Sector No.21. It is not in dispute, as reply to the special civil application has not been filed nor during the course of arguments learned counsel for the respondents controverted that on identical condition a plot for construction of cinema hall has been sold in Sector No.16 and on construction of the cinema hall i.e. Shalimar Theatre, adjoining to that land, land admeasuring 1100 sq. mts. has been granted by the Government of Gujarat to Shalimar cinema on token rent of Re.1/- per annum. Identical condition subject to which this plot of Sector No.21 was put to auction was there. In case what it is contended by the respondents is accepted and what it is ultimately ordered by the State of Gujarat allotting 500 sq. mts. of land on rent of Rs.30,000/- per month then it is a clear case of hostile discrimination. The respondents have failed to give out any justification for this hostile discrimination which is made in between the persons who are identically situated. In case of Shalimar theatre, the land has been allotted on token rent of Re.1/- per annum but in case of the petitioner this has been done on heavy rent and that too a small piece of land has been allotted. If we go by the area of the land which has been put to auction for construction of the cinema hall in these two sectors then certainly the area of the land in Sector NO.21 which now belongs to the petitioner is much larger than the area of the land which was auctioned for construction of cinema hall in Sector NO.16. The area of Shalimar cinema is of 1100 sq. mts. where as that of this Rajshri cinema is 1500 sq. mts. If we go by these facts, otherwise also, the allotment of 500 sq.mts. of land to the petitioners is wholly arbitrary and perverse and a clear act on the part of a welfare State to make hostile discrimination amongst similarly situated persons. The Government of Gujarat being a welfare State should have acted, fairly, reasonably and to abide to its own covenant subject to which the land has been auctioned for construction of cinema hall in Gandhinagar township. On these aspects of area and rent, on which the lands have been allotted to these two cinema halls for parking space is clearly an act of hostile discrimination and it cannot be allowed to stand. In both the cases, 100% coverage of the lands have been permitted and naturally when it has been done, how far it is possible for the owners of the cinema halls to provide parking space therein. The 100% coverage of the land has been permitted for the obvious reason that the Government

of Gujarat had undertaken to provide parking space to the cinema halls on token rent of Re.1/- per annum.

13. The petitioners in the special civil application pray for direction to the respondents to provide at least 2000 sq. mts. of land for parking space adjoining and/or adjacent to the cinema hall. Prima-facie this claim seems to be wholly arbitrary and unjustified. If we go by the facts of the two cases, that is the case of Shalimar cinema and that of the petitioners, in the case of Shalimar cinema 1100 sq. mts. of land has been allotted, meaning thereby, the land to the extent of the area of the land which has been put to auction for construction of cinema hall has been allotted on rent of Re.1/- per annum and in case of the petitioners at the most if everything is taken to be in their favour , the land exceeding the area of 1500 sq. mts cannot be allotted. Otherwise also, earlier the petitioners have demanded only 800 sq. mts. of land for parking and that demand has been made keeping in view the sitting capacity of the cinema hall. Once the petitioners have made a demand of 800 sq. mts. of land, without there being any increase in the sitting capacity of the cinema hall, how far there may be any justification in the claim of the petitioners for allotment of 2000 sq. mts. of land for parking space. However, I am not giving any final verdict on this claim of the petitioners for the reason that it is the matter for consideration of the competent authority, after taking into consideration the size of the plot which has been sold for construction of the cinema hall and the sitting capacity of the cinema hall, what area of land is to be allotted to the petitioners for parking space. However, allotment of land of 500 sq. mts. to the petitioners prima-facie seems to be towards the lower side if we go by the facts of this case, and keeping in view the order of the competent authority allotting 1100 sq. mts. of land to the Shalimar cinema hall for parking space. It is expected of the competent authority to see what area of land may be allotted to the petitioners to provide parking space to the cinema viewers and there may not be any parking of vehicles of the cinema viewers on the road.

14. As a result of the aforesaid discussion, this writ petition succeeds and the same is allowed and the order of the respondent No.1 dated 5th May, 1998 is quashed and set aside and the matter is remanded back to the respondent No.1 for fresh consideration of the applications of the petitioner for allotment of land for parking space. The matter needs to be considered in light of the documents submitted in these proceedings as

well as the observations made and findings given by the court. The matter be decided finally within a period of one month from the date of receipt of writ of this order after hearing the petitioners where they desire an opportunity of personal hearing. The respondent No.1 is to pass a reasoned order in the matter. Liberty is granted to the petitioners for revival of this special civil application in case where it is not satisfied with the order passed by the respondent No.1, on filing a simple note. The respondent No.1 is directed to pay Rs.5000/= as cots of this petition to the petitioners. Rule is made absolute accordingly.

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